

ACCESSING GOVERNMENT INFORMATION IN

Ontario

RESOURCES

Ontario Freedom of Information and Protection of Privacy Act

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90f31_e.htm

Municipal Freedom of Information and Protection of Privacy Act

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m56_e.htm#BK1

Information and Privacy Commissioner/Ontario

<http://www.ipc.on.ca>

Mini Guide to Freedom of Information and Protection of Privacy Act

http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11601&N_ID=1&PT_ID=23&U_ID=6534179785

Mini Guide to Municipal Freedom of Information and Protection of Privacy Act

http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11599&N_ID=1&PT_ID=11205&U_ID=0

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHO CAN REQUEST GOVERNMENT INFORMATION?

Anyone can request government information.

WHAT INFORMATION CAN I ACCESS?

You have the right to access any record under the control of a government institution, subject to certain exceptions described below. Government institutions include provincial ministries, municipalities, agencies, boards, commissions and certain government corporations.

If a record contains information that cannot be disclosed, the institution must remove that information where possible and give you access to the rest of the record.

WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

There are a number of circumstances in which you may be denied access to information, including the following:

Publicly available information

You may be denied access to information that is already available to the public through other means. This includes information for which you must pay a fee and information that will be made available to the public within 90 days of the date when the request is received.

Frivolous or vexatious request

Your access request may be refused if it is frivolous, vexatious or made in bad faith.

Another Act prevails

If the information you want is governed by an Act that specifies that the *Ontario Freedom of Information and Protection of Privacy Act* or *Municipal Freedom of Information and Protection of Privacy Act* does not apply, you cannot access it.

Law enforcement and legal proceedings

Your access request may be denied if disclosure could be harmful to law enforcement. This includes information that would: reveal investigative techniques or details of an investigation; reveal confidential sources of information; endanger anyone; deny someone a fair trial; or facilitate the escape of an inmate. Furthermore, the government institution

may refuse to confirm or deny the existence of such information.

However, you are entitled to access information that is part of a report of a routine inspection conducted by an agency authorized to enforce laws or that consists of statistics related to the success rate of law enforcement.

Employment records

You do not have a right of access to information collected, prepared, maintained or used by an institution in connection with labour relations or employment matters.

Privileged information

Your request for information may be denied if the information is protected by legal privilege such as solicitor-client privilege.

Advice

Unless the information is more than 20 years old, you may be denied access to records that would reveal advice to the government. A government institution must, however, give access to:

- any factual material;
- statistical surveys;
- valuator reports;
- environmental impact statements;
- results of consumer tests and reports;
- performance reports;
- results of feasibility studies;
- field research results; and
- information that is the stated basis of a policy decision.

Cabinet confidences

Unless Cabinet consents, or unless the information is more than 20 years old, you cannot access information revealing the substance of deliberations of the Cabinet or of Cabinet committees. This includes information contained in agendas, minutes, policy analyses, proposals, briefs, and draft legislation or regulations.

Municipal meetings

You may be denied access to draft by-laws or records that reveal the substance of

deliberations of *in camera* municipal council or committee meetings. You cannot be denied access under this exception, however, if the draft by-law has been considered in an open meeting, if the subject-matter of the deliberations was considered in an open meeting, or if the record is more than 20 years old.

Relations with other governments

You may be refused access to information that could harm relations between governments or their agencies, or reveal information received in confidence from another government or agency.

Economic and other interests of a government institution

Your access to information request may be refused if disclosure could harm the economic interests of a government institution. Information under this heading includes: government trade secrets; research where priority of publication would be prejudiced; information to be used in negotiations; policy decisions prematurely disclosed; and other information that could prejudice the economic interest, competitive position or financial interests of the government.

However, access must be granted to results of product or environmental tests unless the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

Conservation

Your access request may be denied if disclosure could harm fish or wildlife species at risk.

Business interests of third parties

You cannot access a third party's trade secrets or other confidential or sensitive information if disclosure could harm the business interests of that third party. This includes tax return information. You can, however, get access when the third party consents to the disclosure.

Third party privacy

Your access request will be denied if disclosure would invade a third party's privacy. Furthermore, a government institution may refuse to confirm or deny the existence of information if to do so could invade a third party's privacy.

Disclosure of the following will be considered an invasion of a third party's privacy:

- personal health information;
- information obtained through a law enforcement investigation;
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's personal recommendations, character references or personnel evaluations;
- a third party's employment or educational history; and
- information revealing the race, ethnic origin, religious or political beliefs, or sexual orientation of a third party.

In addition to the list above, other information may violate a third party's privacy, and in determining whether this is the case a government institution will consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a government institution to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure would inform customer choice;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm;
- whether the information has been provided in confidence;
- whether the information is highly sensitive;
- whether the information is accurate and reliable; and
- whether disclosure could damage a third party's reputation.

There are, however, circumstances when, regardless of the criteria above, disclosure will be permitted. These include:

- when the relevant third party consents in writing to disclosure;
- when there are compelling circumstances affecting an individual's health or safety;
- when another Act expressly authorizes disclosure;
- when disclosure is for research purposes; and
- when the information was collected in order to create a public record.

Archived records acquired from private parties

You cannot access archived records that were acquired from private parties – that is, from people or entities other than government institutions. If the information you want was placed in an archives by a private individual or organization, contact that party directly and ask permission to access the information.

Individual safety

Your access request may be denied if disclosure could threaten anyone's safety.

Public interest override

Some of the above exceptions will not prevent you from getting access to a record if a compelling public interest in disclosure clearly outweighs the advantage of non-disclosure that underlies the exception. Also, apart from any access request, an institution has an obligation to disclose any record to the public or affected persons if it is a matter of public interest revealing a grave environmental, health or safety hazard to the public.

Exceptions related to personal information

For additional exceptions more relevant to personal information, see *Accessing Personal Information in Ontario*.

HOW DO I MAKE A REQUEST?

1. Check whether the information is publicly available or whether you are otherwise entitled to the information. For example, disclosure requirements related to civil and criminal proceedings may apply.

2. Contact government institutions

Call the government institution and ask if it is willing to provide access to the information you want. Such informal methods can be effective, especially when the information you are requesting may be refused under one of the grounds above. Note, however, that informal access requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to request a review by the Information and Privacy Commissioner.

Contact information can be found in the Directory of Institutions at:
<http://www.accessandprivacy.gov.on.ca/english/doi/index.html>

3. Identify the appropriate government institution

a) *Determine whether the institution is subject to access to information law*

All institutions subject to access to information law can be found at:
<http://www.accessandprivacy.gov.on.ca/english/doi/index.html>

b) Determine whether the information is in the custody or control of the government institution

Access-to-information laws only apply to records in the custody or control of a government institution.

4. Frame your request carefully

a) Use government directories to identify likely sources of information

The government of Ontario publishes a Directory of Records available at:
<http://www.cfipo.gov.on.ca/mbs/dor/dirrec.nsf/ODAMainpage/>

b) Request "records"

It will be easier for the government to respond to your request if you ask for records, rather than information. A record is defined as "any record of information however recorded".

c) Request indexes, catalogues, and other records-management aids

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the government institution will have 30 days to respond.

As an example, one research team phrased its request as follows:

Records Management: We request all records related to the handling of records by the Smart Card Project. These include, but are not limited to: policies; standards; and procedures and practices concerning the collection, cataloguing, organization, access, security, retention, disposal, status, and audit trails pertinent to the project ... We also request any indices, catalogues, finding aids, databases, meta-data, and the like intended to facilitate management of, and access to, the records and documents relevant to the Smart Card Project.

d) Be specific

Unless you absolutely need it, try not to request everything available on a subject so as to ensure a faster and less costly response. In addition, the more specific your request is, the less likely the government institution will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations.

5. If you need help

If you need help, ask the relevant government institution. It is required to help you formulate your request if you have trouble describing the records you are seeking.

DO I HAVE TO USE A FORM?

You do not have to use a form, but one is available and it can help you structure your request. The form can be found at: <http://www.ipc.on.ca/docs/accfm-e.pdf>

Note also that although oral requests are permitted, they cannot be appealed.

WHAT WILL IT COST?

In Ontario there is a \$5 application fee for requesting government information. In addition, the following fees will be charged where applicable:

- a) 20 cents per page for photocopies and printouts;
- b) \$10 for floppy disks;
- c) \$7.50 per 15 minutes of time spent searching for a record and preparing it for disclosure, including time spent in making severances;
- d) \$15 per 15 minutes of time spent developing a computer program; and
- e) any other costs incurred by the institution in responding to the request.

If the total fee will exceed \$25, the government institution will send you an estimate before it begins any search on your behalf.

If the total fee will be \$100 or more, you may be asked to pay a deposit before any more steps are taken.

You may ask the Information and Privacy Commissioner to review the amount of the fee.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee, or it would otherwise be fair to waive the fee; or
- releasing the information is in the public interest and relates to public health or safety.

The government institution must reply to your fee-waiver request in writing. If you are not satisfied with the response, you may complain to the Information and Privacy Commissioner.

HOW LONG WILL IT TAKE?

The government institution must respond to your request no later than 30 days after receiving it. If your request is transferred to another government institution, the new

institution must respond to you within 30 days of the date you submitted the request to the first institution.

Your request may be forwarded or transferred to another government institution if:

- the record is in the custody or under the control of the government institution to which your request is being transferred; or
- the record originated with, or was first obtained by, the government institution to which your request is being transferred.

A government institution can extend the time limit for responses when:

- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the government institution;
- a large number of records will need to be searched and responding within 30 days would unreasonably interfere with the operations of the government institution; or
- the government institution needs time to consult with, or give notice to, a third party or another government institution before deciding whether to grant access to a record.

Failure to respond to a request within the time limits is considered a denial of access. You can complain to the Information and Privacy Commissioner about a failure to respond or a decision to extend the time limit.

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies v. originals

You may have copies sent to you or you may view the originals. A government institution may impose one format (copy or original) depending on considerations of length and the nature of the record.

Language

In Ontario, you do not have the option of requesting that information be provided in a language other than English.

Alternative formats

You are entitled to request access to information in whatever reasonably practicable format you wish, subject to the payment of appropriate fees.

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a government institution's response to your access request, you

have the right to appeal its decision to the Office of the Information and Privacy Commissioner. For more information, see *Appealing Access to Information Decisions in Ontario*.